

A. G. Contract No.: KR04-0992TRN
ADOT ECS File No.: JPA 04-050
Project No.: SB40-G-400 ----- Design
STP B40-G(001)--- Construction
Project: Design / Construct Drainage
Section: Navajo Blvd (I-40B)
TRACS No.: H5817 01D / 01C
Budget Source Item No.: 70403 - Design
20604 - Construction
75005 - Enhancement

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF HOLBROOK

THIS AGREEMENT is entered into 9th May, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF HOLBROOK, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 and § 9-276 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State plans to reconstruct Navajo Boulevard (I-40B) in the City, from Midtown I-40B Traffic Interchange (TI) to East I-40B TI, the State and the City have mutually agreed to be responsible for its participation for the design and construction of drainage facilities, which will include an underground pipe system and channel improvements, to protect the surrounding area from the 100-year flood event

NO. 27500
Filed with the Secretary of State
Date Filed: 05/09/05

Janice K. Brewer
Secretary of State

By: David D. Harcewold

4. The State will be responsible for (1) design and re-construction of I-40B to a five-lane urban configuration including curb, gutter, sidewalk and driveways (curb cuts for undeveloped parcels and paved to back of sidewalk for business access); (2) design and construct a storm drain pipe system on the east side of the roadway to convey both on-site and off-site storm flows and outfall into an existing channel at milepost (MP) 287.75, Sta 1729 + 57.91; and (3) reconstruct the existing channel down stream from the outlet headwall of the existing concrete box culvert under I-40B for a distance of 126'; (4) design for location(s) of pedestrian lighting, construct pedestrian lighting pole foundations, install pedestrian lighting conduit and pullboxes; (5) design for location(s) of street lighting, placement of sonotubes at each street lighting locations, install conduit and pullboxes for street lighting only; (6) design and construct for concrete pads for benches and trash receptacles; (7) City will provide sidewalk stamp(s) signifying route 66 insignia. The total estimated cost for items (1) through (6) is \$6,600,000.00, hereinafter referred to as the "State Project". The City will be responsible for the costs of item (5) of the State Project, estimated at \$85,000.00 as shown on Exhibit A attached hereto and made a part hereof, as it is incorporated into State Project per City's request. Further, the City will design and reconstruct the existing channel beginning from the termination point of item (3) of the State Project reference above and continuing to the existing concrete box culvert under I-40, all at City's expense, hereinafter referred to as the "City Project".

5. It is understood and agreed to by the parties herein that by completion of the State Project, storm runoff flows will be concentrated in the existing channel at MP 287.75, Sta 1729 + 57.91 and that the existing channel in its present condition will not provide adequate conveyance of storm runoff until the City has completed City Project referenced herein. The State's responsibility ends where the improvements to the existing channel end, as described in Section I.4, item (3) above. The City responsibility begins where the State's responsibility ends and continues to the concrete box culvert under I-40.

6. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement, invoice the City for its requested work described under Section I.4, item (5), in an amount estimated at \$85,000.00.

b. Prepare to State standard, design plans, specifications and other such documents and services required for construction bidding and construction of the State Project. Incorporate or resolve City's review comments as appropriate.

c. Acquire all clearances pertaining to right of way, utilities and environmental prior to advertising the State's Project.

d. Call for bids and award one or more construction contract(s) to accomplish the State Project. Administer the same and make all payments to the contractor(s).

e. Be responsible for all costs associated with the State Project and any additional increases due to delays, or whatever reason attributable to the State.

f. Reconstruct the I-40B from MP 287.6 to MP 289.71 to a five-lane urban roadway section with concrete curb, gutter, sidewalk and driveways

g. Construct pedestrian lighting infrastructure, concrete pads for benching and trash receptacles

h. Install street lighting conduit and pullboxes and place sonotubes at street lighting locations.

i. Upon completion of State Project, be responsible to provide for, at its own cost and as an annual item in its budget, proper and perpetual maintenance of the drainage facilities and driveways within the State's right-of-way.

j. Upon completion of the State Project, provide the City with a recapitulation of City's requested works costs, include but not limited to: design, post design costs and construction; invoice or reimburse the City any difference between the estimated amount paid by the City and the actual costs of the requested works, which includes fixed rate of 14% for construction, construction engineering and administration costs.

2. The City shall:

a. Upon execution of this Agreement and within 30 days of receipt of an invoice, remit \$85,000.00 to the State for its requested works as described in Section 1.4, item (5).

b. At no cost to the State, and as part of its obligation, obtain any required environmental clearances prior to the construction of City Project

c. Be responsible to provide sidewalk stamp template signifying route 66 insignia to the State

d. Complete the design and construction of the City Project by November 2005

e. Prepare design plans, specifications and other such documents and services required for bidding and construction of City Project. Incorporate or resolve State review comments.

f. Call for bids and award one or more construction contract(s) to accomplish the City Project. Administer same and make all payments to the contractor(s).

g. Be responsible for all costs associated with the City Project, for additional work requested by the City, associated with the State Project and for any additional increases due to delays, or whatever reason attributable to the City

h. Obtain any necessary drainage easements required to construct City Project.

i. Upon completion of City Project, be responsible to provide for, at its own cost and as an annual item in its budget, proper and perpetual maintenance of the drainage facilities outside the State's right-of-way.

j. Upon completion of State Project, be responsible to provide for, at its own cost and as an annual item in its budget, proper and perpetual maintenance to sidewalks, concrete pads for benches, trash receptacles, pedestrian lighting(s) and its appendages, as well as, all electrical energy costs associate with the pedestrian/street lighting(s)

k. Upon completion and acceptance of its requested works associated with the State Project, reimburse the State if the actual costs incurred by the State for the requested works, exceeds the amount of the City's remittance, within 30 days after receipt of an invoice for the actual cost, which includes fixed rate of 14% for construction, construction engineering and administration costs

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims would result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said projects, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said City's Project

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds.** Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9 All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Holbrook
City Manager
P.O. Box 970
Holbrook, Arizona 86025

10 Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF HOLBROOK

STATE OF ARIZONA

Department of Transportation

By 
BRYAN SMITHSON
Mayor

By 
SAM MAROUFKHANI, P. E.
Deputy State Engineer, Development

ATTEST

By 
CHER MILLAGE
City Clerk

EXHIBIT 'A'
City of Holbrook Cost

Item No.	Description	Unit	Quantity	Unit Price	Total
7320060	ELECTRICAL CONDUIT (2-1/2")(pvc)	L.FT	22,500	2.50	56,250
9240119	MISCELLANEOUS WORK (STREET LIGHT SONOTUBE)	EACH	54	325.00	17,550
				Subtotal \$	73,800
				Contingency	11,200
				Totals \$	85,000

RECEIVED

MAY 02 2005

ENGINEERING &
SERVICE

RESOLUTION 05-12

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF HOLBROOK, ARIZONA AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF HOLBROOK AND THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE NAVAJO BOULEVARD WIDENING PROJECT

RECITALS

WHEREAS, pursuant to the provisions of Arizona Revised Statutes Section 11-951, as amended, between the STATE of ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State"), and the CITY OF HOLBROOK, and


WHEREAS, the community and Council members of the City of Holbrook have made the widening of Navajo Boulevard a priority, and

WHEREAS, the Council Members of the City of Holbrook obligates, per the Intergovernmental Agreement (TRACS No. SL427 01C), a cash match in the amount of \$85,000.00 to this opportunity and priority, therefore, be it

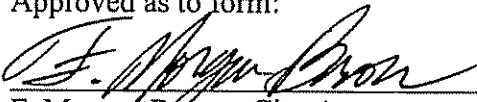
RESOLVED by the Mayor and Members of the City Council of Holbrook, Arizona to authorize and support the Navajo Boulevard Widening Intergovernmental Agreement with Arizona Department of Transportation to move this project forward.

PASSED AND ADOPTED this 26 day of April 2005 by the Mayor and City Council Members of the City of Holbrook.


Bryan Smithson, Mayor

ATTEST:

Cher Millage, CMC, CPM, City Clerk

Approved as to form:


F. Morgan Brown, City Attorney

JPA 04 - 050

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MAY 02 2005

ENGINEERING CONSULTANTS
SERVICES

APPROVAL OF THE CITY OF HOLBROOK ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF HOLBROOK, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 12th day of April, 2005.


City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855


INTERAGENCY SERVICE AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0992TRN (**JPA 04-050**), an Agreement between public agencies, i.e., The State of Arizona and The City of Holbrook, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 5, 2005

TERRY GODDARD
Attorney General


Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
903771